

# A New Era for Immigration Policy and Enforcement: Five Key Issues Affecting Higher Education Institutions

## The First 100 Days: Higher Education

### Client Alerts

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By: Ishan K. Bhabha, Lauren J. Hartz, Lindsay Harrison, Maura E. Smyles, Tayisiya Tkachuk, Venesa Haska

With a promise to deliver the “largest deportation” in the history of the United States, President Trump’s 2024 campaign foreshadowed a new era of immigration policy and enforcement. The first two weeks of the second Trump Administration have already confirmed that major changes are underway, affecting immigration enforcement, visas, border security, and pathways to citizenship. In this installment of our “First 100 Days” series, we cover what universities, and those who study or work on their campuses, should know about recent and anticipated changes in federal immigration policy and enforcement.

### 1. Potential ICE Enforcement Activity on University Campuses

The day President Trump took office, the Department of Homeland Security (DHS) rescinded and replaced a Biden-era memorandum directing federal immigration enforcement officials to avoid taking enforcement action “in or near a protected area,” defined to include colleges and universities, “to the fullest extent possible.” This long-standing policy of non-enforcement on college campuses is also sometimes referred to as the “sensitive locations” guidance, after a similar policy announced in 2011. Under the new directive, colleges, hospitals, and places of worship may now be targets of ICE enforcement operations. A DHS spokesperson said, “Criminals will no longer be able to hide in America’s schools and churches to avoid arrest.”

**What’s Next?** Universities should have policies or protocols in place addressing the proper response to (1) the presence of immigration enforcement officers on their campuses and (2) requests for information about the immigration status of a particular student or community member. These policies might include guidance about the different types of documentation that immigration officers may present in connection with enforcement activity, what actions each type of documentation entitles those officers to take, and a designated person who students or staff members should contact if they are presented with such requests for access or information.

## 2. Prosecutions for Obstructing Federal Immigration Enforcement

In an inauguration-day executive order entitled “Protecting the American People Against Invasion,” President Trump directed the Attorney General and Secretary of Homeland Security to “evaluate and undertake . . . criminal or civil [actions] that they deem warranted based on” the practices of “so-called ‘sanctuary’ jurisdictions . . . that interfere with the enforcement of Federal law.” Then, in a January 21, 2025 memorandum, Department of Justice Acting Deputy Attorney General Emil Bove called on federal prosecutors to investigate and prosecute state and local officials who resist or obstruct federal immigration enforcement. The memorandum points to three federal statutes under which local and state officials could be charged: 18 U.S.C. § 371, which prohibits obstruction of a federal function; 8 U.S.C. § 1324, which prohibits harboring a person who is unlawfully present in the United States; and 8 U.S.C. § 1373, which prohibits restrictions on information-sharing regarding an individual’s immigration status between state or local officials and federal immigration enforcement agencies.

In addition, the DOJ memorandum asserts that lawyers in the Civil Division will work with a newly established “Sanctuary Cities Enforcement Working Group” within the Department of Justice to “identify state and local laws, policies, and activities that are inconsistent with Executive Branch immigration initiatives” and to “take legal action to challenge such laws.”

**What’s Next?** Although state and local governments and officials are the primary focus of these efforts, there is increasing concern about how broadly federal authorities will interpret concepts like harboring and obstruction, including for organizations that provide services of various types to undocumented individuals or that decline to aid in federal enforcement efforts. Universities should carefully review their policies related to undocumented students, responding to the presence of immigration enforcement officials on campus, and responding to information requests from immigration enforcement agencies. In addition, they should exercise caution in terms of statements by the institution and its leaders related to federal immigration enforcement.

## 3. Uncertainty Around the Future of the DACA Program

In 2017, the first Trump Administration attempted to terminate Deferred Action for Childhood Arrivals (DACA), an immigration relief program first announced by DHS in 2012. Several affected individuals and organizations, including Princeton University (represented by a team from Jenner & Block) and the Regents of the University of California, successfully challenged<sup>[1]</sup> that rescission, such that DACA recipients remained protected from deportation. Then in October 2022, the US Court of Appeals for the Fifth Circuit held that the DACA program was unlawfully created without notice and comment rulemaking;<sup>[2]</sup> the panel remanded to the district court to consider in the first instance challenges to the Biden Administration’s intervening rulemaking<sup>[3]</sup> to codify the program.<sup>[4]</sup> Most recently, just days before President Trump took office for his second term, the Fifth Circuit again held that the DACA program is unlawful but remanded once more for further proceedings in

light of the severability of its benefit-conferring provisions from its “forbearance” provisions, or protections against deportation.<sup>[5]</sup>

Although the Fifth Circuit held that the program is unlawful, it limited the nationwide injunctive relief that the district court had ordered in several important ways:

- The injunction is geographically limited to the State of Texas, as the prevailing challenger in the lawsuit;
- The injunction only blocks the benefit-conferring provisions of the program (e.g., work authorization), which the Fifth Circuit held are severable from the protections against deportation; and
- The court preserved an existing stay as to certain DACA recipients, meaning those who were enrolled prior to a July 2021 court order can continue to apply for renewals pending further litigation.

**What’s Next?** It is not yet clear how the Trump Administration will respond to the latest Fifth Circuit ruling. They could decline to appeal, leaving any future litigation before the Supreme Court in the hands of the State of New Jersey and a group of DACA recipients, all of whom intervened in support of the program. Alternatively, they could rescind the DACA regulations entirely (and face potential litigation anew) or curtail existing benefits for DACA recipients, such as by ending work authorization on a nationwide basis (rather than only in Texas) or taking away DACA recipients’ access to health insurance under the Affordable Care Act. As of 2022, an estimated 119,000 DACA-eligible students were enrolled in US institutions of higher education.

#### **4. Enhanced Vetting of Visa Applicants and Visa Holders**

In an inauguration-day executive order entitled “Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats,” President Trump directed various federal agencies to enhance vetting of visa applicants seeking to enter the US “to the maximum degree possible,” particularly for individuals coming from regions with “identified security risks.” The same order also called for ensuring those *already admitted* to the US “do not bear hostile attitudes” toward its culture, government, and founding principles, and do not support “designated foreign terrorists and other threats to our national security.”

Most recently, in a January 29, 2025 executive order entitled “Additional Measures to Combat Anti-Semitism,” President Trump called on various agency heads to make “recommendations for familiarizing institutions of higher education with the grounds for inadmissibility under 8 U.S.C. 1182(a)(3),” a federal immigration provision under which anyone who “endorses or espouses terrorist activity” is ineligible for a visa or for entry to the US. The aim appears to be that universities would report their international students engaged in pro-Palestine activism, and the federal government, in turn, would facilitate their deportation.

**What's Next?** It remains to be seen exactly how the enhanced vetting measures will be implemented. At the very least, all visa applicants should be prepared for longer processing times, and those coming from regions perceived as foreign adversaries to the US (including China) should be prepared to face additional hurdles to obtaining visas. Universities advising their students, faculty, and staff about the visa process should closely monitor developments on this front.

## **5. Potential Use of University Records to Pursue Immigration Enforcement Activities**

Universities collect an array of information from students and their families, both in the admissions process as well as through the processing of financial aid applications. Some of that information, including the FAFSA form, may be shared with the Department of Education and could potentially be used to identify a person's immigration status. While this information generally may not be shared outside the Department of Education without the applicant's consent, there are legal exceptions permitting the information to be shared with other agencies where it might reveal a violation or potential violation of law. Given the Trump Administration's proclaimed interest in ramping up immigration enforcement, it is not inconceivable to anticipate a renewed focus on records held either by the Department of Education or universities that may be of interest to immigration enforcement agencies.

**What's Next?** Universities should consider what information they collect from students and their families and whether the benefits of collecting that information outweigh the potential harms should that information be passed on for use in immigration enforcement activities. University lawyers may also wish to provide guidance to their administrative staff, faculty, and others who collect information from students about how that information may be used to allow them to make informed decisions about what records they collect.

### **And in case you missed it, other significant immigration-related developments include:**

- **An attempt to end birthright citizenship:** In an executive order entitled "Protecting the Meaning and Value of American Citizenship," the Trump Administration asserted that children born in the United States to parents without legal status or parents with temporary legal status, such as tourists, university students, or temporary workers, are not entitled to US Citizenship. While the order was set to take effect on February 19, a federal judge issued a temporary restraining order to block its enforcement in a lawsuit filed by four Democratic-led states. President Trump promised to reporters that his Administration would contest the ruling. The case could be appealed all the way to the US Supreme Court.
- **Potential restriction to work authorization eligibility:** In an executive order entitled "Protecting the American People Against Invasion," the Trump Administration directed DHS to ensure that anyone whose presence in the US is "unauthorized" does not receive work authorization. There is uncertainty around how broadly the term "unauthorized" is to be

interpreted. Under prior law, some individuals were eligible for work authorization while they were in the process of seeking certain forms of immigration relief. It's not yet clear whether President Trump intends for this order to deny work authorization to individuals in those circumstances.

- **Earlier expiration of Temporary Protected Status (TPS) for Venezuelans:** In a February 3, 2025 *Federal Register* notice, Secretary of Homeland Security Kristi Noem announced that she had vacated a January 10, 2025 decision regarding TPS for Venezuelans, effectively revoking an 18-month extension of such protection issued in the final weeks of the Biden Administration. Advocates contend that DHS lacks the authority to do so, and high-profile legal challenges are likely to follow.

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Jenner & Block has one of the nation's preeminent higher education practice groups. We have counseled and represented institutions in numerous areas of the law, including litigating challenges in the first Trump Administration related to immigration-related actions and counseling numerous institutions around the issues outlined above. If you are interested in learning more about our work in this area, please contact practice group Co-Chairs Ishan Bhabha ([ibhabha@jenner.com](mailto:ibhabha@jenner.com)), Lauren Hartz ([lhartz@jenner.com](mailto:lhartz@jenner.com)), and Terri Mascherin ([tmасherin@jenner.com](mailto:tmасherin@jenner.com)).

## Footnotes

[1] *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 591 U.S. 1 (2020).

[2] *Texas v. United States*, 50 F.4th 498, 524 (5th Cir. 2022).

[3] *Deferred Action for Childhood Arrivals*, 87 Fed. Reg. 53152 (Aug. 30, 2022).

[4] *Texas*, 50 F.4th at 512, 531–32.

[5] *Texas v. United States*, No. 23-40653, 2025 WL 227244 (5th Cir. Jan. 17, 2025).

## Related Attorneys

### **Ishan K. Bhabha**

Co-Managing Partner

+1 202 639 6000

**Lauren J. Hartz**

Partner  
lhartz@jenner.com  
+1 202 637 6363

**Lindsay Harrison**

Managing Partner, Washington, DC  
lharrison@jenner.com  
+1 202 639 6865

**Maura E. Smyles**

Associate  
msmyles@jenner.com  
+1 202 639 6864

**Tayisiya Tkachuk**

Associate  
ttkachuk@jenner.com  
+1 312 840 7395

**Venesa Haska**

Associate  
vhaska@jenner.com  
+1 312 840 7337

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